

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

FARRELL BRAYER,

Plaintiff,

v.

ST. CLARE HOSPITAL, FRANCISCAN  
HEALTH SYSTEMS, SERVICE  
EMPLOYEES INTERNATIONAL UNION  
LOCAL 1199 NORTHWEST, SERVICE  
EMPLOYEES INTERNATIONAL UNION  
LOCAL 6 STAFF UNION,

Defendants.

Case No. C06-5291 RBL

ORDER DIRECTING A RESPONSE  
FROM PLAINTIFF BRAYER  
REGARDING DEFENDANTS' MOTION  
TO DISMISS

Pending before the Court are Defendants' Motions to Dismiss Pursuant to FRCP 12(b), Dkt. No.18 & 19. St. Clare asks this Court to dismiss Plaintiff Brayer's Complaint, arguing that this Court lacks subject matter jurisdiction over Count 1, Breach of Contract; Count 3, Violation of Right to Free Speech and Free Association; and Count 4, Emotional Distress.<sup>1</sup> Brayer's Amended Complaint and her Response to St. Clare's Motion to Dismiss are unclear as to the legal bases for Counts 1, 3, and 4. In her Response, Brayer asks the Court for leave to amend her Complaint to further clarify the issues before the Court.

To aid the Court in determining whether it has subject matter jurisdiction over her claims, Brayer shall

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<sup>1</sup> SEIU 1199 NW and SEIU Local 6 (the "Unions") do not raise the issue of whether this Court has subject matter jurisdiction in their Motion to Dismiss. However, Brayer should address the issue in her Second Amended Complaint.

1 submit a Second Amended Complaint clarifying the legal bases for all of her claims against St. Clare and the  
2 Unions. With regard to Count 1, Brayer seems to base her claim on St. Clare's alleged violation of the  
3 Collective Bargaining Agreement (CBA). However, Brayer also seems to base her cause of action in Count  
4 1 on St. Clare's alleged violation of the National Labor Relations Act (NLRA) and the Labor Management  
5 Relations Act (LMRA).

6 Likewise, with regard to Count 3, Brayer seems to base her claim on St. Clare's alleged violation of  
7 the First Amendment of the U.S. Constitution and the Labor Management Reporting and Disclosure Act  
8 (LMRDA). However, Brayer requested leave to amend her complaint to "re-characterize" this cause of action  
9 as a violation of the NLRA.

10 Finally, with regard to Count 4, Brayer seems to make a tort claim for emotional distress. Yet, in her  
11 Response to Defendants' Motion to Dismiss, she argues that her claim for emotional distress is related to her  
12 breach of contract claim in Count 1 and is actionable as unfair labor practices under the NLRA.

13 This Court does not ordinarily have subject matter jurisdiction over causes of action involving activities  
14 which are "either arguably protected by § 7 or arguably prohibited by § 8 of the NLRA." *William E. Arnold*  
15 *Co. v. Carpenters District Council of Jacksonville and Vicinity*, 417 U.S. 12, 15 (1974) (citations omitted).  
16 Instead, the National Labor Relations Board has exclusive jurisdiction. *Id.* at 16. However, if "the activity in  
17 question also constitutes a breach of a collective-bargaining agreement, the [National Labor Relations Board's]  
18 authority 'is not exclusive and does not destroy the jurisdiction of the courts in suits under § 301.'" *Id.*

19 Brayer shall submit her Second Amended Complaint by February 13, 2007. Any further reply by St.  
20 Clare and the Unions in support of their Motions to Dismiss shall be submitted by February 16, 2007.

21 DATED this 6<sup>th</sup> day of February, 2007.

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25 RONALD B. LEIGHTON  
26 UNITED STATES DISTRICT JUDGE  
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